IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Criminal Appeal No.25/2002

Chhigan Lal S/o Suvalal
(at present in Central Jail, Jaipur)
...Accused-Appellant
Versus
The State of Rajasthan through P.P.
Respondent

2. S.B. Criminal Appeal No.24/2002

Jagdish S/o Bhuraram
(at present in Central Jail, Jaipur)
...Accused-Appellant
Versus
The State of Rajasthan through P.P.
Respondent

Date of Judgment :::: 4th of January, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Rajesh Sharma, Counsel for appellants in both criminal appeals
Shri Arun Sharma, P.P., for the State

By the Court:-

These two appeals on behalf of accused-appellants Jagdish S/o Bhuraram and Chhiganlal S/o Suvalal, are directed against the judgment and order dated 7th of December, 2001, passed by the Additional District & Sessions Judge (Fast Track) Jaipur District, Jaipur, in Sessions Case No.101/2001

(253/1997), whereby both the accused-appellants have been convicted under Section 376 (2)(g) of the IPC to ten years simple imprisonment and a fine of Rs.5000/- (Rupees five thousand) each; in default, to further undergo two months simple imprisonment, and under Section 323 IPC to three months simple imprisonment and a fine of Rs.200/- (Rupees two hundred) each; in default, to further undergo seven days simple imprisonment.

The learned counsel for the accused-appellants, Shri Rajesh Sharma, vehemently, argued the appeals on merits, but, during the course of arguments, in view of the statement of the prosecutrix Smt. Prem, her medical-report and other prosecution evidence, confined his arguments on the question of sentence of imprisonment only.

On 27th of September, 1985, PW-2 Manna Lal, the husband of prosecutrix Smt. Prem (PW-3), lodged a written-report at Police Station Shahpura, District Jaipur, wherein he alleged that his wife Smt. Prem had gone to search their cow with accused Jagdish on 26th of September, 1985. It is alleged that Jagdish committed a rape with his wife. It was also alleged that when his wife shouted then another accused Chhigan Khatik also came, who also committed rape with his wife. After

completion of investigation, a challan was filed in the matter. The learned trial court framed the charge for the above offence against the accused-appellants. The learned trial court, after considering the evidence on the record and the submissions on behalf of both the parties, convicted and sentenced the accused-appellants, as mentioned above.

So far as the sentence of imprisonment and the fine is concerned, the learned counsel for the appellants contended that the accused-appellants have already remained in jail for about five and half years and in case the period of remission is counted then it comes to about six years, therefore, looking to all the facts and circumstances of the case, particularly the contradictions in the statement of the prosecutrix as well as other prosecution witnesses and further that the case relates to the year 1985 i.e. 21 years old, it will be just and proper to reduce the sentence of imprisonment to a period of imprisonment already undergone by him.

The learned Public Prosecutor appearing on behalf of the State, defended the impugned judgment passed by the trial court.

I have considered the rival submissions of learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of

the learned trial court.

So far as the merits of the case are concerned, the learned counsel for the accused-appellants himself, during the course of arguments, did not press the appeal in view of the statement of the prosecution witnesses including the statement of the prosecutrix Smt. Prem and confined his arguments only for the purpose of reduction of sentence of imprisonment, therefore, it is not necessary to discuss the facts and prosecution evidence in this regard. The only point for consideration in the present case is whether in the facts and circumstances of the present case the sentence of ten years simple imprisonment awarded by the trial court should be reduced to a period of sentence of imprisonment of five and half years, already undergone by the accused-appellants, or not.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in

(1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed, whereas under sub-section (2) of Section 376 IPC the minimum sentence of ten years has been prescribed. But, under both sub-sections (1) and (2) of Section 376 IPC the minimum sentence is subject to proviso that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years or ten years, as the case may be.

Although the conviction under Section 376 IPC can be maintained on the basis of sole testimony of the prosecutrix and in the present case also the conviction recorded by the trial court has not been challenged during the course of arguments but number of contradictions in the statement of prosecutrix Smt. Prem, have been pointed out by the learned counsel for the accued-appellants and other prosecution witnesses also.

The occurrence took place in the year 1985 and 21 years have already passed till now from the date of occurrence.

After considering all the facts and

circumstances of the present case I am not inclined to accept the contention of the learned counsel for the accused-appellants to reduce the sentence of ten years simple imprisonment to a period of sentence of imprisonment of five and half years, already undergone by the accused-appellants, but, in the facts and circumstances of the case, I find that the minimum sentence of ten years imprisonment is not attracted in the present case and while invoking the proviso to sub-section (2) of Section 376 IPC I reduce the sentence of imprisonment of the accused-appellants from ten years SI to seven years RI and a fine of Rs.5,000/-; in default of payment of fine, to further undergo 15 days SI. The conviction and sentence under Section 323 IPC has not been challenged, therefore, the same is also upheld.

Consequently, both the appeals of the accused-appellants, namely, Jagdish and Chhiganlal are partly allowed. Their conviction under Sections 376 and 323 IPC is maintained, but the order of the learned trial court regarding sentence of ten years simple imprisonemnt and fine of Rs.5000/- under Section 376 IPC is modified and it is reduced to a period of seven years rigorous imprisonment with fine of Rs.5000/- (Rupees five thousand) each; in default of payment of

fine, to further undergo additional fifteen days simple imprisonment. The judgment and order of the trial court is modified to the extend as mentioned above.

(Narendra Kumar Jain) J.

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